

ORIGINAL

NEW APPLICATION



0000080102

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2007 DEC 28 A 10: 24

Arizona Corporation Commission

DOCKETED

DEC 28 2007

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

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In the matter of :

MICHAEL ANDREW DAWES
(CRD#62832) and LINDA DAWES,
husband and wife,

Respondents.

DOCKET NO. S-20570A-07-0709

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
ADMINISTRATIVE PENALTIES,
REVOCATION AND FOR OTHER
AFFIRMATIVE ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent MICHAEL ANDREW DAWES ("DAWES") has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

II.

RESPONDENTS

2. DAWES is and was, at all pertinent times, a registered securities salesman in Arizona since June 9, 1998, CRD# 62832, and operated as a registered securities salesman. DAWES' last known principal place of business was located in Green Valley, Arizona.

3. DAWES was employed by Emmett A. Larkin Company, Inc. ("Emmett Larkin")

1 from May 18, 1998 until February 5, 2007. DAWES was responsible for managing branch offices
2 for Emmett Larkin in Sierra Vista and Green Valley, Arizona. DAWES is not currently affiliated
3 with any securities dealer.

4 4. DAWES is licensed with the Arizona Department of Insurance ("Department of
5 Insurance") to sell life insurance products and variable annuities. DAWES was licensed to sell life
6 insurance in January 24, 1990. His license to sell insurance expires in June 2011.

7 5. LINDA DAWES was at all pertinent times the spouse of DAWES. LINDA DAWES
8 is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of
9 the marital community.

10 6. At all times relevant, DAWES and LINDA DAWES were acting for their own
11 benefit and for the benefit of or in furtherance of the marital community.

12 7. DAWES and LINDA DAWES may be referred to collectively herein as
13 "RESPONDENTS".

14 III.

15 FACTS

16 8. On or about February 5, 2007, DAWES resigned from Emmett Larkin after
17 admitting to law enforcement that he had been misappropriating funds from Emmett-Larkin clients,
18 borrowing funds from Emmett-Larkin clients in exchange for promissory notes and accepting
19 investments from Emmett-Larkin clients for a nonexistent investment opportunity.

20 9. DAWES promised his clients/lenders high interest for the borrowed funds.

21 10. In most instances, DAWES used the money he received from his clients to pay
22 personal expenses and repay prior loans.

23 11. On November 6, 2007, DAWES entered into a plea agreement with the United
24 States Attorney's Office in which he pled guilty to felony violations of Mail Fraud and Money
25 Laundering (a/k/a promotion) ("Plea Agreement"). *See, United States v. Dawes*, United States
26 District Court for the District of Arizona, Docket # CR07-01867-001-TUC-JMR (CRP).

12. As a result of his guilty plea, DAWES faces the following maximum penalties: (a) Mail Fraud: fine of \$1 million, a term of 30 years of imprisonment, or both, and a period of 5 years supervised release; and (b) Money Laundering: a fine of \$500,000 or twice the value of the property involved in the transaction, whichever is greater, a term of 20 years imprisonment, or both, and a period of 3 years supervised release.

13. In the Plea Agreement, DAWES admits to borrowing money from Emmett Larkin clients beginning in 1998. DAWES admits to borrowing the funds to recoup losses he suffered after investing in the options market. DAWES promised investors and those from whom he borrowed money high returns ranging from 10% to 30%.

14. DAWES failed to tell investors that the investment opportunity did not exist. DAWES also failed to tell lenders that he intended to use the funds to pay his personal expenses and pay previous investors.

15. DAWES also disclosed in the Plea Agreement that he had been operating a "Ponzi scheme." DAWES revealed that he received approximately \$4 million from investors between 1998 and 2007. There remains an approximate loss of \$1.7 million loss for DAWES' investors.

16. DAWES' is scheduled to be sentenced in United States District Court for both charges on February 4, 2008.

IV.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

17. In connection with the offer or sale of securities within or from Arizona, Respondent directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the

1 following:

2 a) DAWES misrepresented to some investors that he was investing their money
3 in high interest investments, when in fact the investment did not exist. Instead, DAWES used the
4 money to pay his personal expenses and repay prior investors;

5 b) DAWES misrepresented/failed to disclose to investors that the primary
6 source of funds for repayment of the funds he borrowed was from other investors;

7 c) DAWES misrepresented to investors that there was minimal risk in the
8 "investment," when in fact the repayment of the "investment" to the client was mostly, if not
9 entirely, dependent on DAWES receiving funds from new investors; and

10 d) DAWES misrepresented to investors that their investment would be repaid
11 on a specific date, when in most instances the loan was not repaid or repaid at a much later date.

12 18. This conduct violates A.R.S. § 44-1991.

13 **V.**

14 **REMEDIES PURSUANT TO A.R.S. § 44-1962**

15 **(Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or**
16 **other Affirmative Action)**

17 19. DAWES' conduct is grounds to revoke DAWES' registration as a securities
18 salesman with the Commission pursuant to A.R.S. § 44-1962(A). Specifically:

19 a) DAWES has violated A.R.S. §44-1991 of the anti-fraud provisions of the
20 Securities Act, within the meaning of A.R.S. §44-1962 (A)(2);

21 b) DAWES has been convicted of a felony involving a transaction in securities,
22 of which fraud was an essential element and which arose out of the conduct of business in securities,
23 within the meaning of A.R.S. §44-1962 (A)(6);

24 c) DAWES has been found guilty of a fraudulent act in connection with the
25 purchase and sale of securities, within the meaning of A.R.S. §44-1962 (A)(9);

26 d) DAWES employed a manipulative or deceptive device or contrivance, in

connection with the purchase or sale of a security, as defined by A.A.C. Rule R14-4-130(14); and

20. DAWES' conduct is grounds to assess restitution, administrative penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962 (B). Specifically:

a) DAWES has engaged in dishonest or unethical practices in business and financial matters, within the meaning of A.R.S. § 44-1962 (A)(10) as defined by A.A.C. R14-4-130(A)(15), by borrowing money from customers;

b) DAWES has engaged in dishonest or unethical practices in business and financial matters within the meaning of A.R.S. § 44-1962 (A)(10) as defined by A.A.C. R14-130(A)(16), by making unauthorized use of customer funds for personal benefit; and

c) DAWES has engaged in dishonest or unethical practices in business and financial matters within the meaning of A.R.S. § 44-1962 (A)(10) as defined by A.A.C. R14-4-130(A)(17), by selling securities that were not recorded on the records of the dealer with whom DAWES was registered at the time of the transactions.

VI.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondent to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032 and §44-1962;

2. Order DAWES to take affirmative action to correct the conditions resulting from his acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032 and 44-1962;

3. Order DAWES to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order DAWES to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-1962;

5. Order the revocation or suspension of DAWES' registration as a securities salesman

pursuant to A.R.S. § 44-1962;

6. Order that the marital community of DAWES and LINDA DAWES be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

7. Order any other relief that the Commission deems appropriate.

VII.

HEARING OPPORTUNITY

Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. 44-1972 and A.A.C. R14-4-306. **If DAWES or LINDA DAWES requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

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VIII.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

Additionally, the answering respondent must serve the Answer upon the Division.

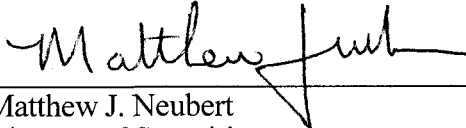
Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Rachel F. Strachan.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 28th day of December, 2007.


Matthew J. Neubert
Director of Securities

(RFS)